

**MINUTES  
of the  
FIRST MEETING  
of the  
LAND GRANT COMMITTEE**

**June 10, 2015  
Room 309, State Capitol  
Santa Fe**

The first meeting of the Land Grant Committee was called to order by Representative Sarah Maestas Barnes, chair, on June 10, 2015 at 9:00 a.m. in Room 309 of the State Capitol in Santa Fe.

**Present**

Rep. Sarah Maestas Barnes, Chair  
Sen. Ted Barela  
Sen. Lee S. Cotter  
Rep. Miguel P. Garcia  
Rep. Jimmie C. Hall  
Sen. Linda M. Lopez  
Sen. Richard C. Martinez  
Sen. Gerald Ortiz y Pino  
Rep. Debbie A. Rodella  
Sen. Sander Rue  
Rep. Bob Wooley

**Advisory Members**

Sen. Carlos R. Cisneros  
Rep. Matthew McQueen

**Absent**

Sen. Jacob R. Candelaria, Vice Chair  
Rep. David M. Gallegos  
Rep. Tomás E. Salazar

Rep. Eliseo Lee Alcon  
Rep. Paul C. Bandy  
Rep. Randal S. Crowder  
Rep. D. Wonda Johnson  
Rep. Patricia A. Lundstrom  
Rep. Christine Trujillo

**Guest Legislator**

Sen. Nancy Rodriguez

**Staff**

Mark Edwards, Legislative Council Service (LCS)  
Michelle Jaschke, LCS  
Peter Kovnat, LCS

**Guests**

The guest list is in the meeting file.

## **Handouts**

Copies of all handouts are in the meeting file.

## **Wednesday, June 10**

Representative Maestas Barnes welcomed committee members, staff and members of the audience and asked them to introduce themselves, which they did.

## **Committee-Endorsed Legislation, 2015 Session — Summary**

Mr. Edwards briefly outlined the five pieces of legislation endorsed by the 2014 interim Land Grant Committee:

- **House Bill (HB) 83**, allowing land grant-merced fund deposits into credit unions and requiring recordable methods for payments from those funds, was the only bill passed and signed (*see*, Laws 2015, Chapter 40);
- **HB 46**, to establish qualified partitioned community land grants as autonomous political subdivisions pursuant to Chapter 49, Article 1 NMSA 1978, passed the house and was reported out of senate committee but was not placed on the consent calendar prior to the senate adjourning sine die;
- **Senate Bill (SB) 172**, to include land grants-mercedes as authorized recipients of funds from the Colonias Infrastructure Project Fund, was not reported out of committee;
- **SB 199**, to create the Land Grant-Merced Project Fund, was amended several times as it moved through senate and house committees but was not acted upon by the full house; and
- **SB 213**, to authorize comprehensive land planning by land grants-mercedes for their common lands, passed the senate late in the session and did not get a committee hearing in the house.

Regarding SB 213, a legislator noted that it had interest from the executive and suggested reintroducing the bill in each chamber during the 2016 session. Another member said that SB 172 is a sound idea, but it should be done as a land-grant specific act, independent of the colonias.

Finally, a number of legislators explained that HB 46 was a bipartisan effort and would have resolved an important issue. The hurdle it faced was that there was a lack of time for a floor debate in the last hours of the session. A proposed amendment that was ancillary to the bill itself was viewed as likely to result in a lengthy floor debate, so the bill was not brought up for consideration by the senate. A legislator suggested a need for better communication between land grant advocates and bill sponsors in the hopes of resolving similar end-of-the-session amendment issues in the future.

## **Land Grants-Mercedes General Background and History**

Dr. Manuel García y Griego, director, Land Grant Studies Program, University of New Mexico, introduced himself and provided the committee with an overview of the history of land grants in New Mexico (see handout).

Highlighting some key points, Dr. García y Griego noted that:

1. at the conclusion of the Mexican-American War, the vast majority of communities north of Socorro were land grant communities, including 23 Indian pueblos and 131 other community land grants-mercedes (154 total) and 141 individual grants. Some of the individual grants, such as Cristóbal de la Serna, became community land grants as their original families expanded;

2. land grant boundaries adjudicated prior to the Civil War, such as Santa Gertrudis de lo de Mora, typically resulted in patent of land for the full extent of a grant's historical claim. However, that changed after the vast, single-family Maxwell land grant claim was approved without a survey;

3. after the Maxwell patent, the federal government switched in 1891 from a surveyor general process to an adjudicated process before the Court of Private Land Claims to validate land grant patents;

4. in the adjudication process, land grant claims were only recognized as extending to the base of the foothills or mountains. This meant that communities, such as the Town of Tomé, lost control of their watersheds and eventually access to traditional timberland resources;

5. further restriction of land claims resulted from the United States Supreme Court ruling in *U.S. v. Sandoval* (1897). The court held that common lands belong to the sovereign entity (i.e., Spain and then Mexico prior to the Treaty of Guadalupe Hidalgo and the United States afterwards). Under the *Sandoval* ruling, seven grants lost between 95% and 99% of their historic land; and

6. loss of land continued for many land grant partition suits and property taxes, as outsiders were invited in and paid some taxes in exchange for a plot of land of the common land.

Summing up the current situation of land grants, Dr. García y Griego stated that approximately 35 land grants continue to have active boards of trustees. These land grant communities retain approximately 200,000 acres of land, or about 2% of what they had in the past. He said that legislation sponsored by the Land Grant Committee has had a positive impact on land grants and the New Mexico rural community. He noted in particular: that 26 community land grants are now political subdivisions of the state under Chapter 49, Article 1 NMSA 1978; the creation of the Land Grant Studies Program at the University of New Mexico in 2008; and the establishment of the Land Grant Council in 2009.

The committee then entered into a general discussion. In response to a question, Dr. García y Griego said that rules governing whether a private landowner could join a land grant depend on the particular grant. He then explained that the primary nongovernmental advocacy group for land grants is the Land Grant Consejo (Consejo). The Consejo does not consider recapturing privately owned land on an original grant unless it is up for sale.

A committee member raised an issue regarding lineas tax assessments. Arturo Archuleta, staff, Land Grant Council, said that lineas, long narrow strips of land, are common designations for components of common land grant land. He noted that lineas were an ingenious way to distribute the tax burden of the common lands, but they created other problems as the role and function of grants have changed over time.

Responding to a query about the difference between community grants and private/family grants, Dr. García y Griego said the committee is focused on community grants because they have common lands, but the Spanish crown and Mexico did not make a sharp distinction between private and community grants. The difference was who had the authority to use the land, not if it was a community or private grant.

Finally, a committee member said that the economic and governing structure of land management in the area that is now New Mexico changed after the Pueblo Revolt of 1680. After 1692, the majority of Spanish land grants were created and populated by genízaros (Mexican, Plains and Diné culture Indians who served as janissary auxiliaries to the Spanish army during the reconquest of New Mexico). The result was a more communal governance structure that significantly differed from the structure used in the rest of colonial Spain.

### **Capital Outlay — Federal Law Considerations for Using Severance Tax Funds for Land Grants-Mercedes**

David Buchholtz, Esq., Rodey, Dickason, Sloan, Akin & Robb, P.A., contract attorney, State Board of Finance, explained that he would focus on how bond attorneys determine whether an entity is a proper recipient of revenues from severance tax bond sales (capital outlay). He noted that there are no state law obstacles for land grants that qualify as political subdivisions under state law. However, it is possible that land grants do not satisfy the federal definition of "political subdivision", which presents other challenges. Federal case law sets out three elements to assess political subdivision status: 1) the power to tax; 2) the power of condemnation; and 3) general police powers such as zoning authority and the issuance of safety regulations. Having any one of these elements would likely satisfy federal requirements for a given entity.

Mr. Buchholtz explained that when it is questionable whether an entity meets federal requirements, the state uses so-called "sponge bond" revenues to fund capital outlay appropriations. Explaining further, he said that taxes are levied on oil, gas and mineral production. These taxes are termed "severance taxes" in reference to when these materials are being severed from the land. The severance tax money goes into the Severance Tax Bonding Fund (STBF). Using the money within the STBF as collateral, the state may issue tax-free

bonds, up to a statutory maximum, to raise money for public infrastructure projects. Twice a year, the State Board of Finance determines how much money is needed to make the next two years of semiannual debt service payments from the STBF. Money that is not used for collateral for tax-free bonds or otherwise needed for the next two debt service payments is available to act as collateral for short-term taxable bonds, up to a statutory maximum. In effect, the residual bonding capacity is "sponged" out of the STBF for capital projects before the underlying residual funds are transferred. Any money remaining in the STBF is then transferred to the Severance Tax Permanent Fund.

A committee member asked if there is a legislative solution to ensure that the land grants-mercedes meet the federal requirements. Mr. Buchholtz noted that tax increment development districts and public improvement districts have the statutorily granted power to tax and that similar authority could be amended into Chapter 49 NMSA 1978 for land grants-mercedes.

When asked how land grants can overcome the difficulties brought on by the reimbursement-only structure for paying for capital projects, Deputy Cabinet Secretary Stephanie Schardin Clarke, Department of Finance and Administration (DFA), said that the department is sensitive to the cash flow challenges faced by small political subdivisions. By law, however, services do have to be provided before payment is rendered, as it is a reimbursement program. Also, Ms. Schardin Clarke said that completed projects must match the project as contemplated or the DFA will not have the authority to make a reimbursement.

A committee member stressed that when a project requires a deposit, the reimbursement system will not work. Mr. Archuleta said that from a land grant perspective, mid- to large-scale purchases are still a problem because of that system. Another obstacle, Mr. Archuleta said, was that the agreed-upon procedures for any expenditure of more than 50% of a capital outlay project requires pre-rendered service before the invoice for payment, but that is impossible for most grants. Even if the vendor is willing to wait to be paid, the vendor at least wants to see the invoice to feel comfortable doing the work.

A legislator then suggested a 45-day window for payment so the cash flow is clear to all parties. Ms. Schardin Clarke responded that it might be possible for land grants-mercedes to submit unpaid vouchers for completed work, and she will have that option reviewed and will confirm for the committee whether this is possible.

A legislator requested that the DFA provide a list of projects, both requested and complete, for land grants and include status, current balance, reversions and ongoing projects.

The chair thanked the presenters and said she hopes to continue working with the department for the benefit of New Mexico's land grants.

### **Land Grant Committee Proposed Work Plan and Meeting Schedule**

Mr. Edwards went through the committee's work plan and meeting schedule (see handout). Additional recommendations from committee members were to receive presentations:

1. on the reorganization of the Tierra Amarilla Land Grant-Merced;
2. from the Ojo Caliente Land Grant;
3. from the Cristóbal de la Serna Land Grant-Merced and, particularly, on the issue of the tax valuations of lineas; and
4. from the Attorney General's Office regarding the obligations of the United States to community land grants pursuant to the Treaty of Guadalupe Hidalgo; particularly including an examination of potential methods for reopening and reversing the ruling in *U.S. v. Sandoval*.

The committee requested that the October 8-9 meeting be held in Rio Arriba County. Noting that the committee had met at Tierra Amarilla and San Joaquin del Rio de Chama last year, staff was requested to inquire about the availability of a suitable meeting hall at one of the smaller land grant-merced communities such as La Petaca.

### ***Motion***

Upon a motion by Representative Rodella, seconded by Representative Hall, and without objection, the proposed work plan and meeting schedule, as amended, passed.

### **Public Comment**

Juan Sánchez, chair, Land Grant Council, raised a concern of how the Department of Game and Fish will resolve issues with elk and deer grazing numbers and hunting permits.

There being no further business before the committee, the Land Grant Committee adjourned at 1:13 p.m.